

Appl. No. 10/070,199  
Atty. Docket No. AA425  
Amdt. dated December 19, 2003  
Reply to Office Action of June 24, 2003  
Customer No. 27752

#### REMARKS

Claims 1 - 10 are pending in the present application. No additional claim fees are believed necessary.

Claims 1 has been amended to more specifically characterize the present invention. Claim 1 has been amended to specifically recite that the moisturizing agent is polypropyleneglycol. New Claim 11 has been added to further defined the present invention. Dependent Claims 2-9 have been amended for claim dependency. Claim 10 has been amended to be an independent claims with proper recitation of the step of making. Claims 2 and 3 have been cancelled.

With regard to the terms Pemulene and Carbopol being defined as proper tradenames or trademarks on page 5 of the instant invention, a replacement paragraph has been submitted.

With regard to Claim 7, Applicants would like to kindly point out that the carboxylic acid/carboxylate copolymers are referred to in the specification at page 4 line10-15, as believed to provide appropriate viscosity and rheology properties to the composition, and would therefore be considered as a viscosity modifier. Therefore, Claim 7 recitation that the composition may further comprise a further viscosity modifier is supported.

With regard to Claim 8, the Examiner had objected to the use of the term "visible particle" as being indefinite. Applicants would like to kindly point out that the specification on page 28, line 1-15, clearly and distinctly define the term "visible particle" is a widely used and understood term of the art and would be clear to one of skill in the art. Applicant respectfully request reconsideration.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

#### Invention Synopsis

Independent Claim 1 of the present invention, as now amended to clarify the invention, relates to a hair conditioning composition for leave-on use on the hair comprising:

a carboxylic acid/carboxylate copolymer, a polypropyleneglycol moisturizing agent and an aqueous carrier. A further independent claim of the present invention as now amended to clarify

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the invention, relates to a hair conditioning composition for leave-on use on the hair comprising from about 0.01% to about 10% of a carboxylic acid/carboxylate copolymer; from about 0.1% to about 10% of a moisturizing agent selected from the group consisting of oleth-5, oleth-3, steareth-5, steareth-4, cetareth-5, cetareth-4, cetareth-3, mixtures of C<sub>9-11</sub>EO5, mixtures of C<sub>9-11</sub>EO2.5, mixtures of C<sub>12-13</sub>EO3, mixtures of C<sub>11-13</sub>EO5, and mixtures thereof; from about 0.05% to about 5% of an amphoteric polymer; and an aqueous carrier.

The composition of the present invention a composition suitable for leave-on use which provides improved conditioning benefits to the hair such as moisturized feel, reduction of bulk hair volume, are easy to apply on the hair, and leave the hair and hands with clean feeling.

**1) Rejection Under 35 USC 102(b) as being anticipated by WO 92/05234 (Welch)**

Claims 1, 4, 6, 7, 8 and 9 are rejected under 35 USC 102(b) as being anticipated by WO 92/05234 ("Welch"). Applicants respectfully traverse this rejection.

Welch discloses a personal cleansing composition comprising from about 0.1 to about 16% of an imidazolinium or ammonium amphoteric surfactant, from about .1 to about 16% of an aminoalkanoate amphoteric surfactant, optionally up to about 10% anionic surfactant, from about .1% to 5% of a dispersed insoluble silicone conditioning agent and water and wherein the cleansing composition has a total surfactant concentration of from about 0.2% to 20% of which at least 20% comprises the mixture of imidazolinium or ammonium amphoteric surfactant, and aminoalkanoate amphoteric surfactant.

However, Welch does not disclose the specific combination of a carboxylic acid/carboxylate copolymer and polypropylene glycol. The present invention, as now amended, requires the specific combination a carboxylic acid/carboxylate copolymer and polypropylene glycol. Welch merely discloses that the composition may contain a silicone suspending agent, of which a hydrophobically-modified acrylic acid polymer may be used, such as Carbopol 1342. However, Welch does not disclose the specified combination of the acrylic acid polymer in combination with a polypropylene glycol moisturizer. Welch, at page 20, states that the cleansing composition can optionally include a hair or skin moisturizer. Further, in Welch's examples I to V, although Carbopol is present, the Examples are absent of any polypropylene glycol moisturizing agent, and for that matter is absent of any moisturizing agent. Welch, therefore, does not disclose or suggest the specified combination of the acrylic acid polymer in combination with a polypropylene glycol moisturizer, as required by the present invention.

Appl. No. 10/070,199  
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The hydrophobically-modified acrylic acid polymer and an optional hair or skin moisturizer are listed as one of many possible ingredients in the final shampoo composition. Within the category of moisturizing agents, polypropylene glycol is mentioned in a long list of potential ingredients, none of which is required. The polypropylene glycol is not included in any of the specific examples, and it is not combined with a carboxylic acid/carboxylate copolymer.

The possible shampoo formulations that can be devised by selecting items from Welch's optional ingredients number in the hundreds. A shampoo combining a carboxylic acid/carboxylate copolymer with the specified polypropylene glycol moisturizing agent is only one of these hundreds of possible shampoo formulations. There is no embodiment of this combination. In fact, there is no example that includes a polypropylene glycol moisturizing agent, or for that matter, any moisturizing agent. Therefore, Applicants contend that Welch does not anticipate Applicants claims.

**2) Rejection Under 35 USC 102(b) as being anticipated by US Patent 5,344,643 (Thiel et al).**

Claims 1, 4-7, 9 and 10 are rejected under 35 USC 102(b) as being anticipated by WO US Patent 5,344,643 (Thiel et al). Applicants respectfully traverse this rejection.

U.S. Patent 5,344,643 ("Thiel") relates to shampoo conditioning compositions, and discloses compositions comprising Carbopol 1342 and dimethicone copoyol, in Examples I-XI and XIII-XV. However, Thiel does not disclose the specific combination of a carboxylic acid/carboxylate copolymer and polypropylene glycol. The present invention, as now amended, requires the specific combination a carboxylic acid/carboxylate copolymer and polypropylene glycol. However, Thiel does not disclose nor suggest or exemplify the use of a polypropylene glycol moisturizing agent.. The present invention, as now amended, requires the use of a polypropyleneglycol moisturizing agent. Therefore, the present invcntion is neither disclosed or suggested by Thiel.

**3) Rejection Under 35 USC 102(b) as being anticipated by FR 2,748,932 (Mireille)**

Claims 1, 3, and 7-8 are rejected under 35 USC 102(b) as being anticipated by FR 2,748,932 ("Mireille"). Applicants respectfully traverse this rejection.

Mireille relates to a hair dying composition containing at least one crosslinked polymer with acrylic units and C<sub>10</sub>-C<sub>30</sub> alkyl acrylate units. Mireille discloses dyeing compositions containing PEMULEN TR-1 and ethoxylated decyl alcohol with 5.3mol ethylene glycol.

Appl. No. 10/070,199  
Atty. Docket No. AA425  
Amtd. dated December 19, 2003  
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Customer No. 27752

However, Mireille does not disclose nor suggest the use of a polypropyleneglycol moisturizing agent. The present invention, as now amended, requires the use of a polypropyleneglycol moisturizing agent. Further, Mireille neither discloses nor suggests the use of an amphoteric polymer. The present invention, as further amended with new Claim 11, requires the use of an amphoteric polymer. Therefore, Applicants contend that Mireille does not anticipate Applicants' claims.

**4) Rejection Under 35 USC 102(b) as being anticipated by GB 2,315,771 (Yamamoto et al)**

Claims 1 and 2 are rejected under 35 USC 102(b) as being anticipated by GB 2,315,771 (Yamamoto). Applicants respectfully traverse this rejection.

Yamamoto relates to an aqueous non-foamable gel shaving composition comprising a carboxyvinyl polymer or a copolymer of acrylic acid and alkyl methacrylate. Yamamoto discloses that "The component -A copolymer of acrylic acid and alkyl methacrylate may include copolymers ....it is possible to use those specified by trade names PEMULEN TR-1, PEMULEN TR-2.....(described in Pg.9, the second paragraph). Yamamoto also discloses the shaving composition further comprising a polyhydric alcohol (described in Claim 8), and further discloses that "the polyhydric alcohol is at least one of sorbitol, glycerol,.....polypropylene glycol, and polyethylene oxide (described in Claim 9). However, Yamamoto does not disclose nor suggest a hair conditioning composition for leave-on use on the hair. Further, Yamamoto does not disclose the specific combination of a carboxylic acid/carboxylate copolymer and polypropylene glycol. The present invention, as now amended, requires the specific combination of a carboxylic acid/carboxylate copolymer and polypropylene glycol. Further, Yamamoto does not disclose nor suggest the use of specific moisturizing agents as recited in new Claim 11 of the present invention, nor does Yamamoto disclose or suggest the use of an amphoteric polymer, as also recited and required in new Claim 11.

In Yamamoto, the carboxyvinyl polymer or a copolymer of acrylic acid and alkyl methacrylate and the polyhydric alcohol, of which polypropylene glycol is included, are listed as one of many possible ingredients in the final shampoo composition. Within the category of polyhydric alcohols, polypropylene glycol is mentioned in a long list of potential ingredients, none of which is required.

The possible shampoo formulations that can be devised by selecting items from Yamamoto's optional ingredients number in the hundreds. A shampoo combining a carboxylic acid/carboxylate copolymer with the specified polypropylene glycol moisturizing agent is only one of these hundreds of possible shampoo formulations. There is no embodiment of this

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Customer No. 27752

combination. Therefore, Applicants contend that Yamamoto does not anticipate Applicants claims.

**5) Rejection Under 35 USC 102(a) as being anticipated by WO 99/24010 (Drzewiecki et al)**

Claims 1, 3-5 and 7-9 are rejected under 35 USC 102(a) as being anticipated by WO 99/24010 ("Drzewiecki"). Applicants respectfully traverse this rejection.

Drzewiecki relates to a composition comprising a solid polyol fatty acid polyester and other solid oils. Drzewiecki discloses that the solid oil is selected from the group consisting of ....fatty alcohols....polypropylene glycols, ....(described in Claim 6). Drzewiecki also discloses that, "Suitable fatty alcohols for use herein include monohydric alcohols, ethoxylated fatty alcohols, ....Suitable ethoxylated fatty alcohols include, but are not limited, Unithox 325..." (described in page 5, last paragraph). Drzewiecki discloses that, "The compositions herein can contain various emulsifiers ....Suitable emulsifiers can include, but are not limited to, ....Steareth-20, Cetareth-20,..." (described from page 10, last paragraph to page 11, third paragraph). Drzewiecki discloses that, "Another component useful in the compositions herein is a carboxylic acid copolymer thickener....commercially available as Carbopol 1342, Pemulen Tr-1, Pemulen TR-2...." (described from Page 11, fourth paragraph to page 12, third paragraph). Drzewiecki discloses a topical composition comprising Pemulen TR-1, Steareth-2, and Steareth-21.

However, Drzewiecki does not disclose the specific combination of a carboxylic acid/carboxylate copolymer and polypropylene glycol. Drzewiecki also does not disclose the specific combination of a carboxylic acid/carboxylate copolymer and specific moisturizing agents as recited in new Claim 11 of the present invention. Furthermore, Drzewiecki does not disclose nor suggest the use of an amphoteric polymer.

In Drzewiecki, a carboxylic acid copolymer thickener and a solid oil are listed as one of many possible ingredients in the final shampoo composition. The carboxylate acid copolymer is an optional ingredient and is not required. Within the category of solid oils, polypropylene glycol is mentioned in a long list of potential ingredients. The polypropylene glycol is not included in any of the specific examples, and it is not combined with a carboxylic acid/carboxylate copolymer.

The possible shampoo formulations that can be devised by selecting items from Drzewiecki's optional ingredients number in the hundreds. A shampoo combining a carboxylic acid/carboxylate copolymer with the specified polypropylene glycol moisturizing agent is only one of these hundreds of possible shampoo formulations. There is no embodiment of this

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Customer No. 27752

combination. In fact, there is no example that includes a polypropylene glycol moisturizing agent. Therefore, Applicants contend that Drzewiecki does not anticipate Applicants claims.

#### Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 U.S.C 112 and 102(a) and 102(b). Early and favorable action in the case is respectfully requested.

Applicants have made an earnest effort to place their application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, Applicants respectfully request reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1-11.

Respectfully submitted,

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December 19, 2003  
Customer No. 27752